



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,149	02/08/2001	David Charles Lyons	12929.1062US01	7449

23552 7590 07/02/2002

MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER

YEUNG, JAMES C

ART UNIT	PAPER NUMBER
----------	--------------

3743

DATE MAILED: 07/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/781,149

Applicant(s)
Lyons et al.

Examiner
James C. Yeung

Art Unit
3743



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 17, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6, and 9-26 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, and 9-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☒ The proposed drawing correction filed on Apr 17, 2002 is: a) ☒ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

Art Unit: 3743

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no proper antecedent basis for "the compression molded material" in line 1.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, and 19-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Hussong '493 (newly cited). The structure is fully anticipated by Hussong '493. In particular, Hussong '493 shows in Figs. 7-8, a gas burner for a fireplace, comprising:

a burner panel (78) defining a top surface and a bottom surface;

a bottom burner member coupled to the burner panel (66);

Art Unit: 3743

wherein the burner panel (78) defines at least one aperture (at 80) to provide a gas/air mixture to the top surface of the burner panel (78); and

wherein the burner panel comprises a compression molded material (col. 1, lines 45-67 and/or col. 3, lines 53-67).

4. Claims 3, 6, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Shimek '464 (newly cited). The structure as claimed is fully anticipated by Shimek '464. In particular, Shimek '464 shows in Figs. 7-8, a gas burner for a fireplace, comprising:

a burner panel defining a top surface and a bottom surface, wherein the burner panel (24C) is molded to form at least one performed log (col. 6, line 12);

a bottom burner (11C) coupled to the burner panel (24C);

wherein the burner panel (24C) defines at least one aperture (24A) to provide a gas/air mixture to the top surface of the burner panel (24C);

wherein the bottom surface of the burner panel (24C) defines at least one cavity (38);

wherein the at least one performed log defines at least a portion of the at least one cavity (38); and

wherein the at least one cavity (38) extends above at least a portion of the top surface of the burner panel (note Fig. 7).

Art Unit: 3743

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Shimek '464 (newly cited) in view of Hussong '493 (newly cited)

Shimek '464 discloses the invention substantially as claimed. However, Shimek '464 does not disclose the burner panel comprises a compression molded material.

Hussong '493 teaches the use of a burner panel (78, Fig. 8) formed of a compression molded material for the purpose of improving the overall production of the burner panel (col. 2, lines 27-31 and/or col. 4, lines 63-65).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the burner panel (24C, Fig. 70) of Shimek '464 from a compression molded material such as taught by Hussong '493 in order to improve the overall production of the burner panel.

7. Claims 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimek '237 (prior art of record) in view of Hussong '493 (newly cited).

Art Unit: 3743

Shimek '237 discloses the invention substantially as claimed. In particular, Shimek '237 shows in Figs. 15-18 a gas burner for a fireplace, comprising:

a burner panel (14) defining a top surface and a bottom surface;

a bottom burner (17) coupled to the burner panel (14);

wherein the burner panel (14) defines at least one aperture (20,48,63) to provide a gas/ air mixture to the top surface of the burner panel (14); and wherein the burner panel (14) comprises a bottom panel of a combustion chamber enclosure (note Figure 12).

However, Shimek '237 does not disclose that the burner panel (14) comprises a compression molded material.

Hussong '493 teaches the use of a burner panel (78, Fig. 8) comprising a compression molded material for the purpose of improving the overall production of the burner panel (col. 2, lines 27-31 and/or col. 4, lines 63-65).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the burner panel (14, Figs. 15-18) of Shimek '237 from a compression molded material such as taught by Hussong '493 in order to improve the overall production of the burner panel.

8. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hussong '493 (newly cited) in view of Shimek '464 (newly cited).

Art Unit: 3743

Shimek '464 teaches the use of a burner panel (24C, Fig. 7) having at least one performed log (col. 6, line 12) for the purpose of simulating a solid-fuel gas fire.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form a portion of the burner panel (79, Fig. 8) of Hussong '493 into at least one performed log such as taught by Shimek '464 in order to simulate a solid-fuel gas fire.

9. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hussong '493 (newly cited) in view of Shimek '237 (prior art of record).

Shimek '237 teaches the use of a burner panel (note element 14, Figs. 12 and 15-18) for the purpose of forming a bottom panel of a combustion chamber enclosure.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to dispose the burner panel of Hussong '493 in the manner as taught by Shimek '237 in order to form a bottom panel of a combustion chamber enclosure.

10. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimek '237 (prior art of record) in view of Hussong '493 (newly cited).

Shimek '237 discloses the invention substantially as claimed. In particular, Shimek' 237 shows in Fig. 3 a method of assembling a prefabricated fireplace, comprising:

providing a combustion chamber enclosure (11) having a burner panel (14) as a bottom panel of the combustion chamber enclosure (11); and providing an outer enclosure (31,27)

Art Unit: 3743

surrounding the combustion chamber enclosure (11). However, Shimek '237 does not disclose that the burner panel (14) comprises a compression molded material.

Hussong '493 teaches the use of a burner panel (78, Fig. 8) formed of a compression molded material for the purpose of improving the overall production of burner panel (col. 2, lines 27-31 and/or col. 4, lines 63-65).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the burner panel (14, Fig. 3) of Shimek '237 from a compression molded material such as taught by Hussong '493 in order to improve the overall production of the burner panel.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sinsley '467 is cited to show an artificial log (note Fig. 7) comprising a compression molded material.


Sinsley '725 is cited to show an artificial burner panel (note Fig. 8) comprising a compression molded material.

Bleach (U.K. Pat 2179438, not listed in the last Office action) is cited to show a solid-fuel simulating gas fire.

Art Unit: 3743

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C. Yeung whose telephone number is (703) 308-1047. The facsimile phone number for this Art Unit is (703) 308-7764.

JY
June 25, 2002


James C. Yeung
Primary Examiner